

## § 200.40

### § 200.40 Joint disposition of business by Commission meeting.

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

[60 FR 17202, Apr. 5, 1995]

### § 200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

[60 FR 17202, Apr. 5, 1995]

### § 200.42 Disposition of business by *seriatim* Commission consideration.

(a) Whenever the Commission's Chairman, or the Commission member designated as duty officer pursuant to § 200.43, is of the opinion that joint deliberation among the members of the Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or contrary to the requirements of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may be disposed of by circulation of any relevant materials concerning the matter among all Commission members. Each participating Commission member shall report his or her vote to the Secretary, who shall record it in the Minute Record of the Commission. Any matter circulated for disposition pursuant to this subsection shall not be considered final until each Commission member has reported his or her vote to the Secretary or has reported to the

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Secretary that the Commissioner does not intend to participate in the matter.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to § 200.42(a) shall be withdrawn from circulation and scheduled instead for joint Commission deliberation.

[42 FR 14692, Mar. 16, 1977, as amended at 59 FR 53936, Oct. 27, 1994. Redesignated and amended at 60 FR 17202, Apr. 5, 1995]

### § 200.43 Disposition of business by exercise of authority delegated to individual Commissioner.

(a) *Delegation to duty officer.* (1) Pursuant to the provisions of Pub. L. No. 87-592, 76 Stat. 394, as amended by section 25 of Pub. L. 94-29, 89 Stat. 163, the Commission hereby delegates to an individual Commissioner, to be designated as the Commission's "duty officer" by the Chairman of the Commission (or by the Chairman's designee) from time to time, all of the functions of the Commission; *Provided, however,* That no such delegation shall authorize the duty officer (i) to exercise the function of rulemaking, as defined in the Administrative Procedure Act of 1946, as codified, 5 U.S.C. 551 *et seq.*, with reference to general rules as distinguished from rules of particular applicability; (ii) to make any rule, pursuant to section 19(c) of the Securities Exchange Act of 1934; or (iii) to preside at the taking of evidence as described in section 7(a) of the Administrative Procedure Act, 5 U.S.C. 556(b), except that the duty officer may preside at the taking of evidence with respect to the issuance of a temporary cease-and-desist order as provided by Rule 511(c) of the Commission's Rules of Practice, § 201.511(c) of this chapter.

(2) To the extent feasible, the designation of a duty officer shall rotate, under the administration of the Secretary, on a regular weekly basis among the members of the Commission other than the Chairman.

(b) *Exercise of duty officer authority.* (1) The authority delegated by this rule shall be exercised when, in the opinion of the duty officer, action is required to be taken which, by reason of its urgency, cannot practicably be scheduled for consideration at a Commission meeting. After consideration of a staff